

ROMERO -CROSS - DEFENSE

1 do you have any idea?

2 THE WITNESS: It was given to me
3 afterwards, so I guess it was prepared in the
4 apartment after they searched. I was not there
5 when it was done, sir. I was still down here.

6 MR. KEITH: Let's mark this Defendant's
7 Exhibit F.

8 Q. I'd like you to take a look at what's been
9 marked as Defendant's Exhibit F for identification and
10 see if it refreshes your recollection with regard to
11 the items that were in open view in the fourth floor
12 apartment on November 1, 2007.

13 A. You want me to read the whole thing or tell
14 you what's on the desk. What was on the desk --

15 Q. Take a look at it, refresh your recollection,
16 put it down and then tell the jury what you recall.

17 A. Two scales on the desk, not one scale.

18 Q. What else?

19 A. Ziploc bags for packaging on a mantel.
20 Underneath the desk was a large heat sealer which is
21 used to heat seal small bags, and a lot of residue on
22 the table.

23 Q. Detective Romero, you were involved in the
24 investigation that led to the issuance of the initial
25 warrants, the warrants for the second floor and what

YVETTE PACHECO SENIOR COURT REPORTER

ROMERO -CROSS - DEFENSE

1 you believed to be the third; is that correct?

2 A. That is correct, sir.

3 Q. And while involved in that investigation,
4 isn't it true that in investigation with those
5 warrants, there was no information that implicated
6 Edward Green in any way?

7 A. That's correct.

8 Q. With regard to the fourth floor, before going
9 into the apartment where you found Mr. Green, did you
10 try the keys on any other doors on to the fourth floor?

11 A. Like I stated before, I tried them after,
12 before I came down here.

13 Q. On the fourth floor I'm talking about.

14 A. I tried them after, before I came down here I
15 knew it would be a question if the keys fit any other
16 door, and that's why I tried them on other doors.

17 Q. Page 304, starting at line six. Again, these
18 are questions by Justice McLaughlin.

19 "Were there four separately divided rooms
20 on the fourth floor?"

21 You answered: "Yes, sir."

22 Justice McLaughlin: Did each of those
23 have a lock?

24 You answered: "Yes."

25 The Judge: "And how was it that you went

YVETTE PACHECO SENIOR COURT REPORTER

ROMERO -CROSS - DEFENSE

1 into the one where Mr. What's-his-name was found,
2 the fellow sitting on the couch, I think, how did
3 you get in there?"

4 You answered: I opened it with a key,
5 opened the door on the fourth floor that also
6 opened door that the cables were going into.

7 Judge: "You said the door in which the
8 fellow was ultimately found on the fourth floor
9 was the only door to which keys fit, so I assume
10 that at least one of the other of the three other
11 rooms on the fourth floor landing you tried the
12 keys?"

13 You answered: "Yes."

14 Do you recall being asked those questions
15 and giving those answers?

16 A. Yes, I do.

17 Q. So is it your recollection that you tried the
18 keys on the other doors on the fourth floor or you went
19 straight to the apartment where Mr. Green was?

20 A. I stated numerous times that after we entered
21 the apartment and placed Mr. Green under arrest, I
22 tried all the doors. If I was asked did it open any
23 other doors, I would have the answer.

24 MR. KEITH: May we approach?

25 THE COURT: Yes.

YVETTE PACHECO SENIOR COURT REPORTER

ROMERO -CROSS - DEFENSE

1 (Whereupon, a sidebar conference was held
2 on the record out of the hearing of the jury.)

3 MR. KEITH: Your Honor, I'm going to wrap
4 it up shortly. With regard to the trying of the
5 keys on the third, can I now ask that question?

6 THE COURT: I don't think so. The
7 question that he just was asked, I was listening
8 needless to say, because it's interesting to hear
9 your own questioning, there was no context as far
10 as time. So I assume if you are to ask him a
11 question about the third floor, the answer is
12 going to be similar to what he's given. He's going
13 to say whatever he's going to say, but it will be
14 in the context that I knew I was going to be asked
15 if the keys deal with the third floor. What did
16 he say at the Darden hearing about the third floor
17 that you want to contrast?

18 MR. KEITH: I wanted to go back to the
19 affidavit and --

20 THE COURT: No.

21 MR. BERLAND: While we're here, as far as
22 the stipulations and publishing the stuff for
23 jury, do you want it done after?

24 THE COURT: We will do that today. As
25 soon as you guys are finished, I will send them

YVETTE PACHECO SENIOR COURT REPORTER

ROMERO -CROSS - DEFENSE

1 out and ask the loyal court reporter to find us
2 and read us the disputed part of the keys so that
3 before the jury comes back in I'll have a better
4 idea of what actually was said. I may not make a
5 ruling. We'll, all three, hear it at the same
6 time.

7 MR. BERLAND: I will ask for a bathroom
8 break right before we do that.

9 (Whereupon, the sidebar conference
10 concluded and the proceedings continued in open court
11 as follows:)

12 Q. Detective Romero, with regard to the execution
13 of the warrants of the second and third floor, what
14 time did that activity start?

15 A. We had a tact meeting back at our office
16 at 4:30 in the afternoon on the 1st. Around 5:00, five
17 after five, we headed to vicinity of the location which
18 is only a few blocks from my office, and we executed
19 the first warrant. The entry time was 1720, which
20 is 5:20.

21 Q. Would you describe that as the afternoon?

22 A. Five-twenty in the afternoon, yes, late
23 afternoon.

24 Q. With regard to the third floor, I know it's
25 your testimony that you went to the third floor after

YVETTE PACHECO SENIOR COURT REPORTER

ROMERO -CROSS - DEFENSE

1 the warrant was obtained and executed on the fourth
2 floor; am I understanding you correctly?

3 A. As far as what?

4 Q. You tried the keys to the apartments on the
5 third floor?

6 A. On my way down, I tried the keys on all the
7 apartments, yes.

8 Q. Was that after the warrant was executed on the
9 fourth floor?

10 A. No, sir.

11 Q. When was that, the sequence?

12 A. Once Mr. Green was in custody and I was going
13 down to see Mr. Berland, I went down and I tried the
14 keys in all the doors. This way, if I was asked, does
15 it work in all the doors, and the answer was no.

16 Q. When you went to those apartments, did you see
17 any residents?

18 A. Two different people came out. I knocked
19 before I put a key in the door.

20 Q. Did you go into any of those apartments?

21 A. No, sir.

22 Q. Did you look into any of those apartments?

23 A. No, sir.

24 THE COURT: Did he look in any of the
25 apartments or either of the two apartments from

YVETTE PACHECO SENIOR COURT REPORTER

ROMERO -CROSS - DEFENSE

1 which he said people came out.

2 THE WITNESS: What's the question?

3 THE COURT: I am asking Mr. Keith.

4 MR. KEITH: What was the question?

5 THE COURT: Precisely. You said did you
6 look into any of those apartments. I didn't know
7 whether you were asking whether he looked into
8 either of the apartments from who he said somebody
9 emerged after he knocked or whether you were
10 asking whether somehow he looked into any of the
11 other five apartments.

12 Q. Can you answer that, Detective?

13 A. I said I didn't look. People answered the
14 door and I told them I was trying the key. I asked if
15 they were okay and they said yes and they closed the
16 door.

17 Q. Page 39, line 11, again directing your
18 attention to the hearing when you were questioned by
19 Justice McLaughlin.

20 The Judge asked you: "Did you ultimately
21 get into the eight apartments on the third and
22 fourth floor?"

23 You answered: "No, sir."

24 Judge: "Did you get into any of them?"

25 You answered: "We knocked on a few

YVETTE PACHECO SENIOR COURT REPORTER

ROMERO -CROSS - DEFENSE

1 doors."

2 The Judge: "Some people opened?"

3 You said: "Yes, yes."

4 The Judge: "You stuck your head in to
5 make sure there was nobody?"

6 And you answered: "Correct."

7 Is that what happened?

8 A. They opened the door. They did the proper
9 thing. I knocked on the door, said police, they opened
10 the door, I asked if they were okay, I told them I was
11 trying key, and that was it.

12 THE COURT: Same instruction.

13 Q. Detective, is it fair to say that with regard
14 to your recollection of what happened on November 1,
15 2007, that, obviously, it would be clearer back in
16 November of 2007 and in the month thereafter as opposed
17 today?

18 A. I don't see anything different, no.

19 Q. Since the time, I would imagine you've been
20 involved in other search warrants?

21 A. Numerous, yes, sir.

22 Q. And you made a number of arrests since then?

23 A. Yes, sir.

24 Q. So would it be fair to say that your
25 recollection with regards to the activities of

YVETTE PACHECO SENIOR COURT REPORTER

ROMERO -CROSS - DEFENSE

1 November 1st were clearer back then?

2 A. Would be clearer on that day, yes. After
3 reviewing my notes, I don't see any --

4 MR. KEITH: No further questions.

5 THE COURT: Anything?

6 MR. BERLAND: No.

7 THE COURT: You're excused.

8 (The witness was excused.)

9 THE COURT: I will ask you folks to step
10 out. I want you folks to be available in
11 about 12 minutes, maybe 15. We will have you out
12 of here by ten of five, real time.

13 Keep an open mind. Do not discuss the
14 case. When you come back in, we'll show you the
15 property that I promised you and tell you a little
16 bit more. I need to consult with the lawyers and
17 reporter about what we are going to do tomorrow.

18 (Jurors exit.)

19 (The record was read back by the court
20 reporter as requested.)

21 THE COURT: We're winding down. The
22 Court reporter has graciously found and read to us
23 the opening statement by Mr. Keith. The defendant
24 undoubtedly is with the phrase clearly others had
25 access to the apartment as did the police either

YVETTE PACHECO SENIOR COURT REPORTER

ROMERO -CROSS - DEFENSE

1 keys or the key they found on the second floor
2 from Mr. Brown, not Mr. Green's apartment, he's
3 not the lessee, it's not his business, apartment,
4 car, et cetera, clearly others had access to the
5 apartment. I want to hear what you have to say,
6 both sides, about that.

7 Last time I dealt with this, I was
8 willing to say okay, and Court of Appeals wasn't.
9 I believe that you are allowed to say that you're
10 not going to hear any evidence that the defendant
11 had keys to the apartment. That might be where
12 the Court of Appeals says that's not so good, but
13 I think it's okay. What we have here is clearly
14 others had access to the apartment, that means
15 Mr. Green had no access to the apartment.

16 MR. KEITH: I don't know if that's an
17 inference. The People are going to argue just the
18 opposite, Your Honor.

19 THE COURT: Let me hear him and you will
20 get the last word.

21 MR. BERLAND: If you'd like, I will pull
22 case law. Same arguments that I made earlier.

23 THE COURT: Let's leave it at that. Pull
24 some cases. We'll come in 20 minutes before the
25 jury.

YVETTE PACHECO SENIOR COURT REPORTER

ROMERO -CROSS - DEFENSE

1 MR. KEITH: Let me say this real quick.

2 In his opening, he indicated that the experienced
3 detective took the keys to search the fourth
4 floor, they used the key to open up the door, and
5 basically I just repeated that and stated the
6 obvious. Once they got the keys from another
7 location, would appear to me that the obvious
8 natural flow, the inference that can be drawn from
9 that is that other People have access to this
10 apartment. I think that argument is available to
11 me once it's mentioned that keys were found in a
12 jacket on the second floor were used to gain
13 access to the apartment.

14 THE COURT: Maybe. But what I pointed out
15 I think was that when literally a litany of the
16 lack of things that the apartment is as to
17 Mr. Green, lessee, owner, tenant, business, not
18 his trunk, not his car and that he is in the wrong
19 place at the wrong time, when you say at the end
20 of the litany what the connection is absent, you
21 don't say anything other than finish the thought I
22 think is the most logical way to say it. He
23 doesn't have this connection, this doesn't have
24 this connection, this doesn't have this
25 connection, this isn't his place, he doesn't do

YVETTE PACHECO SENIOR COURT REPORTER

ROMERO -CROSS - DEFENSE

1 this. Your words "clearly others had access to
2 the apartment," clearly he --

3 MR. KEITH: Unfortunately, that argument
4 is available to me. They found a key in another
5 location. I think it naturally flows that the
6 suggestion is that others have access.

7 THE COURT: Sure, and that means others
8 have access, he doesn't.

9 MR. KEITH: I don't know if that's the
10 natural flow. Certainly others have access.

11 THE COURT: We're finished. Find cases.
12 We'll bring in the jury. I'll summarize
13 stipulation, we will see the property and cianara
14 for the day.

15 MR. KEITH: Your Honor, that litany of
16 questions is from the CJI charge from constructive
17 possession.

18 THE COURT: Sure. Everybody's got to
19 adopt every CJI charge to the situation. CJI
20 charge doesn't automatically come in every time
21 evidence is suppressed. That argument is available
22 every time. I'm sure this doesn't come as a major
23 surprise.

24 Bring in the jurors.

25 COURT OFFICER: Jury entering.

YVETTE PACHECO SENIOR COURT REPORTER

ROMERO -CROSS - DEFENSE

1 THE COURT: When I gave you the
2 preliminary instruction, I said there were three
3 ways to get evidence. I said that via stipulation.
4 There are two stipulations here with respect to
5 the material that was seized, supposedly being
6 narcotics, and there are stipulations with respect
7 to two different voucher numbers, the voucher
8 numbers the ones ending in 21910 and 21912.

9 With regard to 21912, a chemist received
10 this intact condition, in an envelope, sealed. He
11 or she opened it, weighed it, analyzed it. The
12 weight was 17.87 ounces. The chemist determined
13 that it was cocaine and the chemist resealed it
14 and sent it back and it is what is introduced into
15 the trial here.

16 The other voucher, 2910, is also cocaine.
17 The chemist received it sealed, analyzed it. The
18 weight is .16 ounces or 4.7 grams and then the
19 chemist sealed it, sent it back and the thing
20 admitted in the trial also. You can see the
21 exhibits. I reiterate, you do not have to memorize
22 the details. Please pass the things among each
23 other.

24 There are some legal things that the
25 lawyers and I have to do tomorrow. We'll start

YVETTE PACHECO SENIOR COURT REPORTER

ROMERO -CROSS - DEFENSE

1 at 9:45. I need you folks here at 10:15, and there
2 will be some more of the trial.

3 Whether we get to the possibility where I
4 put you into a position to decide the case
5 tomorrow or Monday, I don't know. We will not
6 know until tomorrow. Plan on it being Monday, but
7 I don't know what's going to happen.

8 If you need the stuff in the room during
9 the deliberations, you can ask for it. The
10 stipulations are now in evidence. You are all
11 looking at me which means you probably have seen
12 the exhibits.

13 Tomorrow's schedule, who knows. I suggest
14 that you bring something to read because I know
15 that from 12:30 until 2:30 I will not be
16 available. There is a circumstance under which you
17 may be in the jury room deliberating. Also a
18 circumstance that that will not be happening and
19 you will be asked to come back after 2:30. Or
20 we'll finish and you will have Friday afternoon
21 off. I don't know.

22 When I get this, I don't get a crystal
23 ball. I try to keep you updated on the
24 possibilities. I want you here at 10:10. I would
25 have resolved whatever it is I'm doing and we'll

YVETTE PACHECO SENIOR COURT REPORTER

ROMERO -CROSS - DEFENSE

1 do the next thing.

2 Keep an open mind. Do not discuss the
3 case. Do not go to the area. Do not discuss the
4 case or look at anything in media form. If you are
5 reading it, disassociate yourself immediate from
6 it, whether this case or similar case. Do not let
7 anybody speak or influence your judgment. This
8 doesn't mean I think somebody will try to do it.
9 We're required to mention this to each jury in
10 every case.

11 Be on time. You've been very good. See
12 you tomorrow at 10:10. Thank you.

13 (Jurors exit.)

14 THE COURT: We'll also have the charge
15 conference tomorrow. I plan to do CJI on
16 constructive possession and in concert. I asked
17 the assistant to see whether or not, based on the
18 vouchers for the drugs because my recollection of
19 where things were turned out to be faulty. I
20 asked him because I thought some of the stuff on
21 the fourth floor was actually packaging. That was
22 not the case. I was worried about what a jury
23 could do if they discount stuff in the safe but
24 agree with stuff in the fourth floor, but there
25 isn't any. It is the safe or nothing on the fourth

YVETTE PACHECO SENIOR COURT REPORTER

ROMERO -CROSS - DEFENSE

1 floor. He's obviously, accused of the second floor
2 which is the C felony under the weight or B felony
3 under the possession with intent to sell or is it
4 both from your standpoint if the C is based on
5 weight as being a lesser included?

6 MR. BERLAND: Both. On the indictment,
7 we have the B possession with intent to sell. From
8 our standpoint that's all it is, the second floor.

9 THE COURT: I thought that you said that
10 the weight of the packaged drugs on the second
11 floor was in excess of an eighth or half ounce.

12 MR. BERLAND: Of an eighth. That's not on
13 the indictment.

14 THE COURT: Understand that.

15 MR. BERLAND: Correct.

16 THE COURT: You will have an option, I
17 believe, under the first count which charges in
18 excess of eight ounces, you will have the option
19 of asking for a lesser included of the C felony of
20 the stuff on the second floor when in excess of an
21 eighth of an ounce. I believe the theory being
22 the jury could decide if your client basically was
23 somehow involved in this, but the People could not
24 prove he had any control over the stuff in the
25 safe, they can decide he was liable in concert

YVETTE PACHECO SENIOR COURT REPORTER

ROMERO -CROSS - DEFENSE

1 with Mr. Brown for what was on the second floor of
2 a C felony in excess of an eighth of an ounce. You
3 can decide whether to charge that or all or
4 nothing with the overall weight charge being in
5 excess of an eight ounces. His not testifying you
6 will tell me at the request to charge, and we'll
7 talk about this key thing at 9:45.

8 MR. KEITH: With regard to count two, the
9 intent to sell, it is the People's theory that
10 it's not constructive possession, it is the acting
11 in concert.

12 THE COURT: You have to look at him.

13 MR. BERLAND: Both. He possessed all of
14 this with intent to sell it.

15 THE COURT: If I had to answer the jury's
16 question, the People's contention is that he is
17 responsible for everything and responsible under
18 the second count for intending in concert or alone
19 with Brown to sell some or all, that he is liable
20 for having possessed alone or in concert.

21 MR. KEITH: Your Honor, I think that
22 count should be dismissed.

23 THE COURT: I'm sure you do. What are
24 you talking about?

25 MR. KEITH: There's no rational theory

YVETTE PACHECO SENIOR COURT REPORTER

ROMERO -CROSS - DEFENSE

1 that fits the second floor apartment. The acting
2 in concert doesn't fly, and certainly no
3 constructive possession.

4 THE COURT: The stuff on the second floor
5 apartment is the stuff that is actually packaged
6 with the label on it with the stamp, 67 little
7 envelope things.

8 MR. KEITH: But the detective said it's a
9 stamp that's pretty common, seen them in other
10 cases, other search warrants.

11 THE COURT: What I know is it's a
12 well-known brand for sale. It wouldn't be a
13 common brand in whatever region it is if it
14 weren't well sought after.

15 MR. KEITH: So that's enough to prove
16 beyond a reasonable doubt --

17 THE COURT: You keep doing this. It's
18 enough for the jury to make the decision. What
19 they do is up to them. See you tomorrow.

20 MR. BERLAND: I will have
21 Detective Romero here.

22 THE COURT: See you tomorrow.
23
24
25

YVETTE PACHECO SENIOR COURT REPORTER

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF NEW YORK PART-93

3 THE PEOPLE OF THE STATE OF NEW YORK,

4 -against-

5 TRIAL

6 EDWARD GREEN,

7 Defendant

8 September 12, 2008

9 B E F O R E: HONORABLE E. MCLAUGHLIN, JSC
10

11 (Appearances as previously mentioned.)

12 COURT OFFICER: Case on trial continued.

13 All parties are present. Let's continue.

14 MR. BERLAND: Can I be heard as to the
15 keys, Your Honor?

16 THE COURT: Yes. Anybody have anything
17 they want me to read?

18 MR. BERLAND: I have a few cases. Let me
19 hand them up. People V Melendez, People V Massie,
20 and People V Shack. Court of Appeals cases. And
21 yesterday I provided People V Rojas. I'm
22 providing a copy to Counsel as well.

23 THE COURT: Is there anything you want me
24 to read, Mr. Keith?

25 MR. KEITH: No, Your Honor.

____YVETTE PACHECO SENIOR COURT REPORTER____

PROCEEDINGS

1 THE COURT: What else do you want to say?

2 MR. BERLAND: People V Melendez is the
3 leading "opening the door case" in New York. It
4 holds when a door has been opened, and as Your
5 Honor is aware there is no bright line rule, and
6 it is within the discretion of the trial court,
7 redirect examination is permissible to a point.

8 This is key words the Court of Appeal
9 uses, "cannot bring out remote and tangible
10 evidence" and "must bear evidence." And only
11 evidence that must be made necessary by the
12 opponent's action should be allowed.

13 In our case, evidence regarding the keys
14 being found on the Defendant is necessary based on
15 defense counsel's opening statement. The evidence
16 I propose to offer is neither remote nor tangible.
17 It's paramount to the case. Allowing testimony
18 would not be anything like in Melendez because I
19 asked one or two questions focused on whether or
20 not keys were found on the defendant and whether
21 they accessed any of the apartments. That's it.

22 I said People versus Rojas yesterday. I
23 will not get back into that. It states a door is
24 opened when a misleading argument is put before
25 the case.

PROCEEDINGS

1 People V Massie, I believe, is the most
2 recent Court of Appeals case to fully discuss the
3 concept in the suppression term, and it holds that
4 a trial court does not abuse the discretion by
5 allowing necessary evidence as long as the
6 evidence is not too remote.

7 The last case I provided is People V
8 Shack. In that case, defense counsel obtained a
9 pretrial ruling that the defendant's mental
10 illness cannot come into the trial. The Court of
11 Appeals held that the door was opened by
12 interjecting issue into the opening.

13 We reviewed the opening in this case
14 yesterday. The only assumption that can be made
15 when defense counsel states clearly forced access
16 to the room, after listing a whole list of reasons
17 that distances the defendant from the room and
18 stated "in the wrong place at the wrong time" is
19 that the defendant did not have access to the
20 room.

21 The defendant doesn't have a burden to
22 open, but chose to interject the issue in the
23 opening and into this case. They cannot use a
24 suppression issue as a shield and sword.
25 Defendant affirmatively misled, whether things

PROCEEDINGS

1 lead to or not evidence, and evidence of keys must
2 come in. Not saying it was intentional.

3 THE COURT: Mr. Keith.

4 MR. KEITH: Your Honor, I totally
5 disagree. First of all, the opening statement is
6 not evidence. I made that clear to the jury, and
7 Your Honor made that clear to the jury.

8 Secondly, my statement with regard to the
9 fact that the People opened by indicating that the
10 officers used keys to get into the apartment where
11 Mr. Green was found, I restated in my opening
12 that, yes, the police officers used keys to get
13 into that room.

14 I think it's necessary -- not necessary.
15 It's a logical progression to ask that obviously
16 others had access to the room. They got the key
17 from another location.

18 There's been some minor question with
19 regard to where that key was actually found.
20 Your Honor, in a pretrial hearing, questioned the
21 detective and made it absolutely clear that the
22 key was recovered from a jacket that was on a
23 chair in the second floor apartment, and near that
24 jacket was the co-defendant, Steven Brown. The
25 People mischaracterized that testimony from day

PROCEEDINGS

1 one to say that the key was recovered from Steven
2 Brown.

3 In any event, that's the way the opening
4 statement, which is not evidence, came out, and
5 that was my reaction to it.

6 Now, during the trial, which is basically
7 at its end, we heard from both detectives. There
8 hasn't been much said about the key, except that,
9 again, it was erroneously stated that the keys
10 were recovered from Steven Brown.

11 On cross-examination, I brought out that
12 the keys were recovered from a jacket on a chair
13 near Steven Brown. Nothing else has been said
14 about keys.

15 Melendez, I think, supports my argument.
16 Opening the door analysis necessarily has to be
17 approached on a case-by-case basis. Under the
18 facts of this case, I don't think the door has
19 been opened to allow in keys that were seized as a
20 result of legal police activity.

21 The Rojas case, in that case, defense
22 attorney made his argue -- made remarks in his
23 opening and followed that up by cross-examination,
24 and that was dealt with at that time on redirect.

25 I think the People's argument here to try

PROCEEDINGS

1 to get keys in now are untimely, and it's not
2 supported by the evidence. It was by a -- he's
3 trying to get keys in by a remark that's not in
4 evidence, by a remark made in the opening. This
5 issue was dealt with during the trial testimony.

6 I think it would be extremely prejudicial
7 to Mr. Green to allow the keys in at this juncture
8 under these circumstances. I respectfully ask
9 Your Honor to not allow the People to do it.

10 THE COURT: The defendant's opening,
11 including his attorneys, stated that the defendant
12 was in the wrong place at the wrong time. The
13 opening presented a series of statements regarding
14 the defendant's lack of connection with the fourth
15 floor apartment, including it's not his office, he
16 does not lease it, it's not his automobile, among
17 other representations.

18 Additionally, the attorney referred to
19 the answers given to him by two separate
20 prospective jurors who were residential
21 superintendents, that they frequently were alone
22 inside the apartment as part of their
23 responsibilities.

24 Parenthetically, that is in the same voir
25 dire where the attorney stated, on top of being an

PROCEEDINGS

1 accused not testifying during his or her own
2 trial, prefaced that statement with a reference to
3 the "there are two sides to every story."

4 Mr. Keith's opening to the statement then
5 said, clearly others had access to it, such as
6 police who entered with keys they took from down
7 on the second floor.

8 That statement was tantamount to saying
9 the defendant had no more access to the apartment
10 than anyone else without keys, that, as with the
11 police, he had no keys of his own and would have
12 had to have been given access to the one, quote,
13 close quote, to whom the opening referred.

14 While a statement such as "you will not
15 hear evidence that he had access himself," without
16 mentioning the word keys, might have been within
17 legal use of favorable suppression rulings stating
18 that he had no access, others did. That not even
19 a New York City Police Officer could get in the
20 apartment without somebody else's keys twisted the
21 suppression ruling by arguing that the defendant
22 had no connection to the apartment and had no
23 means of getting into it other than by someone
24 else's keys.

25 Defense misused the suppression ruling

PROCEEDINGS

1 intentionally or not to mislead the jury.

2 The issue with this trial is defendant's
3 supposed dominion and control over the drugs found
4 hidden in the two closet safes within the fourth
5 floor apartment.

6 The fact that the defendant had keys to
7 the fourth floor still leaves the jury the issues
8 of whether he knew about the existence or contents
9 of arguably hidden safes and whether he exercised
10 dominion and control of the drugs found about one
11 of them.

12 Consequently, introduction of the
13 suppressed keys, while adverse to the defendant,
14 is not so overwhelmingly admitted. They're
15 admissible for the reasons just stated.

16 MR. KEITH: If I may.

17 THE COURT: I heard you yesterday, I
18 heard you just now. If he loses, you can appeal.

19 MR. KEITH: I think we necessarily have
20 to have a mistrial at this point. This trial has
21 evolved into, I submit, a travesty of justice for
22 a number of reasons.

23 Right at the start of the trial I asked
24 Your Honor for a ruling with regard to the fact
25 that I anticipated the People arguing that

PROCEEDINGS

1 Mr. Green did not move, or something to that
2 effect, when the officers came in or didn't open
3 the door for the officers when they were banging
4 on the door.

5 I think that's a basic constitutional
6 right to remain silent. The Court of Appeals --
7 if you are under arrest, you can remain silent.

8 THE COURT: We talked about this. You
9 watched eloquently, and I didn't adopt your
10 position. If that's one of the contributors to
11 the travesty, that's on the record. That can be
12 appealed, but you will lose on that one also.

13 MR. KEITH: Your Honor is aware that the
14 Court of Appeals has held that the failure of the
15 defendant to open an apartment door for the police
16 does not warrant an inference of criminal intent.
17 Your Honor never did rule on that. The People
18 opened on it --

19 THE COURT: We left it to the charge
20 conference. I told you, I'm sure, that if you
21 wanted me to tell them that he had no obligation
22 to open the door, I remember telling you that I
23 certainly would do that and deferred to the charge
24 conference, which will be later on this morning;
25 maybe not very much later on.

PROCEEDINGS

1 MR. KEITH: Secondly, Your Honor, your
2 ruling limited my cross-examination of
3 Detective Romero, Your Honor, and the assistant
4 district attorney had the benefit of hearing
5 testimony from this detective ex parte and asked
6 him specific questions, and he gave you answers.

7 THE COURT: What are you talking about,
8 please?

9 MR. KEITH: In particular, you may recall
10 that from that hearing, as I previously stated
11 with regard to the keys, you specifically got him
12 to admit that the keys were recovered from a
13 jacket pocket near Mr. Brown and not from
14 Mr. Brown. But he came in here and still
15 testified that the keys were recovered from
16 Mr. Brown. The People elicited testimony when
17 they both knew that wasn't factually accurate.

18 THE COURT: I'm tempted to say, "So
19 what?" There is a constructive possession,
20 there's in concert possession. Let's assume that
21 he lied on one of the two items, either in the
22 Darden hearing with me or in front of the jury.
23 The point is, as I made yesterday, the jury, under
24 the rules that bigger, smarter people than I am,
25 Court of Appeal of the United States says a trial

PROCEEDINGS

1 jury doesn't get a second bite, nor does a
2 defendant in front of the jury get a second bite.
3 They get a bite at Huntley and Wade, but not
4 physical evidence suppression hearings, nor Darden
5 hearings. If this is contribute to the litany of
6 small contributors, I think you're so far 0 for 3.

7 MR. KEITH: Obviously, Your Honor, that's
8 your opinion. I feel that Your Honor is limiting
9 my cross-examination of Detective Romero. Again,
10 we know that he and Assistant District Attorney
11 Berland prepared an Affidavit to get a search
12 warrant, and in the Affidavit, they described
13 certain things.

14 They described how officers went to every
15 door on the third floor and then up to the fourth
16 floor, and then at trial, he testifies as to
17 something different. The People elicited that
18 testimony. Again --

19 THE COURT: That's still on the record
20 for you to do anything you can do with it.

21 MR. KEITH: You've limited my
22 cross-examination and did not allow me to question
23 him with regard to the officer's activities on the
24 third floor. Your Honor, we have already heard
25 testimony from both detectives. This ruling

PROCEEDINGS

1 clearly changes the posture of the case.

2 When I think back to the motion I made
3 after the People's opening, asking Your Honor to
4 dismiss this case, legally at that time with the
5 People's opening remarks, without any keys on Mr.
6 Green, legally it was impossible for the People to
7 prove their case of constructive possession.

8 I gave Your Honor a few cites at that
9 time. I want to make the record clear that the
10 Court of Appeals has ruled on this issue on a case
11 that's almost identical, actually more egregious
12 than the situation here, People V Headley 74
13 New York 2nd at 858.

14 In Headley, as I tried to explain before,
15 and as I'm going to explain again, the door was
16 not open. It was a search warrant execution. The
17 police officers banged on the door 25 times,
18 according to the decision, three men were found in
19 the living room in that apartment. Weapons,
20 drugs, and money were found concealed in a metal
21 box on a table.

22 Now, the defendant, Headley, he was found
23 hanging out of the window. And near Headley
24 there was a loaded gun, open jacket pocket with
25 over \$2,000. There was a machine gun on the

PROCEEDINGS

1 floor, gun found between the mattress and
2 bedspring in the room, and drug paraphernalia,
3 three scales, grinder, sifter, and a package of
4 pyramid paper. In a bedroom closet, a leather
5 tote bag that contained cocaine and marijuana and
6 two more loaded guns and two holsters.

7 The Court of Appeals, Your Honor, held
8 that the failure of the defendants to open the
9 door does not amount to an inference of criminal
10 intent, and that the evidence in this case does
11 not establish that the defendant had actual or
12 constructive possession of the drugs or weapons
13 that were found in the closed container.

14 There are a number of cases that follow
15 immediately, in particular People V Edwards, 206,
16 Appellate Division 2nd 597. In that case, the
17 location was described as a narcotics' factory.

18 In People V Pedro Encarnacion, the
19 location described as a working apartment. In the
20 cases, the defendant was found in that location
21 similar to Mr. Green.

22 Here, you suppressed the keys that he had
23 on his person, and there's nothing else that
24 connects Mr. Green to that location or the
25 narcotics that were found. I think Your Honor

PROCEEDINGS

1 should likely rule that the case is just legally
2 impossible.

3 There's also People V Thomson, 214,
4 Appellate Division 2nd 762. People V Sally 2001
5 WL 1607761. Also a Law Journal cite, October 12,
6 2001, Page 20, Column 2. The Court of Appeals in
7 People V Pierson, 75 New York 2nd, Page 1001.
8 People V Swang 241, Appellate Division 2nd at 695.
9 I do have copies for the People and for Your
10 Honor.

11 Your ruling today creates a slight
12 logistical problem for me.

13 THE COURT: What's that?

14 MR. KEITH: I do have witnesses that I
15 would like to bring forth. One of my witnesses
16 has a child that has Down's Syndrome and will not
17 be available today, but I believe he will be
18 available to testify on Monday morning. I believe
19 there will be a second witness. Not sure about
20 that at this point.

21 THE COURT: So, we'll do the People's
22 witness -- we'll wait until Monday. I assume the
23 witness will be here on Monday, no issue about
24 that. The witness can arrange the situation to be
25 available Monday?

PROCEEDINGS

1 MR. KEITH: Yes.

2 THE COURT: Let me think whether I will
3 be in this room --

4 MR. BERLAND: You Honor, as to the
5 witness, Mr. Keith did not provide any names of
6 anyone who might testify. In fact, he indicated
7 that no one would testify. I ask for an offer of
8 proof or have the information over the weekend so
9 I can do my investigation.

10 THE COURT: You can be sure they're not
11 character witnesses.

12 MR. KEITH: He can be pretty sure of
13 that. Your Honor's ruling specifically precludes
14 Mr. Green from testifying. Certainly not going to
15 open that door.

16 THE COURT: You made that jump long ago,
17 and it had to do with the Sandoval ruling rather
18 than the last ruling.

19 MR. KEITH: Your Honor, I provided him
20 with the name, address, and date of birth of the
21 anticipated witness.

22 THE COURT: Fine. Bring them in.

23 COURT OFFICER: Jury entering.

24 THE COURT: Good morning. You heard me
25 say some things concern you, some things don't

ROMERO - REDIRECT - PEOPLE

1 concern you. During a trial, testimony admissible
2 under circumstances, it changes. You will hear
3 Detective Romero recalled. Do not speculate about
4 why anything was not done early. Simply not of
5 your concern. You will evaluate accuracy and
6 credibility when it's exposed to you.

7 Recall Detective Romero.

8 COURT OFFICER: Witness entering.

9 THE CLERK: Detective, you are still
10 under oath.

11 THE COURT: Go ahead.

12 REDIRECT EXAMINATION BY

13 MR. BERLAND:

14 Q. Good morning.

15 A. Good morning.

16 Q. On November 1, 2007, did you recover any keys
17 from the defendant, Edward Green?

18 A. Yes, I did.

19 Q. You've been handed what has been marked for
20 identification as People's Exhibit 28.

21 A. Yes. These are the keys recovered from
22 Mr. Green at the time of the arrest.

23 Q. From where did you recover the keys?

24 A. They were clipped onto his belt.

25 Q. Is there a clip on that?

YVETTE PACHECO SENIOR COURT REPORTER

ROMERO - REDIRECT - PEOPLE

1 A. A Carabiner clip right here (indicating).

2 Q. Approximately how many keys recovered?

3 A. Probably in excess of 25 or more.

4 Q. Are the keys in the same condition or
5 substantially the same condition as they were when you
6 recovered them on November 1, 2007?

7 A. Yes, they are.

8 MR. BERLAND: Your Honor, at this time, I
9 ask that the keys be received into evidence.

10 THE COURT: Anything beyond what has been
11 said already?

12 MR. KEITH: Actually, I'd like to take a
13 look at them, that's all.

14 THE COURT: Certainly.

15 (Handing.)

16 THE COURT: Anything beyond what has been
17 said already?

18 MR. KEITH: No.

19 THE COURT: Admitted over objection. Go
20 ahead.

21 MR. KEITH: May I ask a couple of voir
22 dire questions?

23 THE COURT: Sure.

24
25 YVETTE PACHECO SENIOR COURT REPORTER

ROMERO - VOIR DIRE - DEFENSE

1 VOIR DIRE EXAMINATION BY

2 MR. KEITH:

3 Q. Detective Romero, who found the keys?

4 A. I took them off his belt at the time of
5 arrest, sir.

6 MR. KEITH: I will save the rest for
7 cross-examination. I believe I object to the
8 entry of the keys.

9 THE COURT: They're received.

10 MR. BERLAND: I believe I misspoke.
11 They're People's Exhibit 29, not 28.

12 THE COURT: All right. What else?

13 CONTINUED REDIRECT EXAMINATION BY

14 MR. BERLAND:

15 Q. Did the keys open the room to any of the rooms
16 in 451 Lenox Avenue?

17 A. They opened the apartment on the fourth floor,
18 Apartment 2 -- Apartment 1 on the second floor, and
19 also the outer door to the building.

20 Q. Do you know if they opened the laundromat?

21 A. I believe they worked on the outer locks.

22 Q. So, the keys that were clipped to the
23 defendant's waist opened the fourth floor stash room?

24 A. Yes.

25 MR. KEITH: Objection to the

YVETTE PACHECO SENIOR COURT REPORTER

ROMERO - RECROSS - DEFENDANT

1 characterization as a stash room.

2 THE COURT: Yes. I think it's
3 unnecessary. The topic is fine, but the question
4 is eradicated from your memory.

5 Q. Did the keys open the fourth floor door?

6 A. Yes, they did.

7 MR. KEITH: I missed it.

8 Q. Did the keys open the door to the fourth floor
9 apartment?

10 A. Yes. To the apartment where Mr. Green was,
11 yes.

12 MR. BERLAND: Nothing further.

13 THE COURT: Mr. Keith.

14 RECROSS-EXAMINATION BY

15 MR. KEITH:

16 Q. Good morning.

17 A. Good morning, sir.

18 Q. Please describe to the ladies and gentlemen of
19 the jury the circumstances under which the keys were
20 recovered.

21 A. At the time of arrest --

22 Q. "The time of arrest," meaning when he was
23 handcuffed?

24 A. Yes, sir.

25 Q. This was in the hallway in front of the

YVETTE PACHECO SENIOR COURT REPORTER

ROMERO - RE CROSS - PEOPLE

1 apartment on the fourth floor?

2 A. No, sir. Inside the apartment he was
3 handcuffed.

4 Q. So, while in the apartment, he was handcuffed.
5 Then what happened?

6 A. Correct. The keys were removed. Because of
7 the size of the keys, they were removed from the belt.

8 Q. You removed the keys?

9 A. Yes, and put them on the couch.

10 Q. You did what with them?

11 A. Put them on the couch.

12 Q. Did you have a conversation with Mr. Green
13 after that?

14 A. Very brief, sir.

15 Q. Did you ask him why he had so many keys?

16 A. I believe so.

17 Q. What did he say?

18 MR. BERLAND: Objection.

19 THE COURT: Sustained.

20 Q. Didn't he tell you that he was --

21 MR. BERLAND: Objection.

22 THE COURT: Sustained.

23 Q. Did he tell you he was the manager of the
24 laundry?

25 MR. BERLAND: Objection.

YVETTE PACHECO SENIOR COURT REPORTER

ROMERO - RECROSS - DEFENSE

1 THE COURT: Sustained. Disregard it.

2 Q. Detective Romero, with the keys, isn't it true
3 that you then tried to see where the keys fit?

4 A. Not at that time. Later on I did.

5 Q. Later on you did?

6 A. Yes.

7 Q. Did the keys fit some of the apartments?

8 A. I tried it on the fourth floor, the second
9 floor, and the outer door, yes.

10 Q. So, it fit some of the other apartments?

11 A. No -- yes, I checked the second floor
12 apartment. That was the only other apartment, other
13 than the fourth floor, I checked.

14 Q. You didn't check the third floor apartments
15 with the keys?

16 A. No.

17 Q. On the third floor, was just the keys
18 recovered from the second floor that you used to check
19 those apartments?

20 A. Because those were the keys I was worried
21 about for getting a search warrant, sir.

22 Q. So, correct me if I'm wrong. You get a search
23 warrant for the second floor apartment, you find keys
24 there, and you use those keys to check every apartment
25 in the building; that's basically what you did?

YVETTE PACHECO SENIOR COURT REPORTER

ROMERO - RECROSS - DEFENSE

1 A. After we made entry into the fourth floor
2 apartment --

3 Q. I'm not saying when. That's what you did
4 ultimately, right?

5 A. Yes. Uh-huh.

6 Q. Now, you go up to the fourth floor, you find a
7 fair amount of drugs, you find Mr. Green with a bunch
8 of keys, and you do not check every apartment to see
9 where the keys fit?

10 A. The only reason I checked the other keys on
11 the third floor was, when I went down to get the search
12 warrant, I knew I would be asked if it opened any other
13 apartments. So, I didn't check, no. It would have
14 taken a long time to check all the keys in every
15 apartment.

16 Q. The keys worked for the laundromat, to gain
17 entrance into the laundromat?

18 A. I believe there's keys on there for the outer
19 locks of the metal gates. That's the only keys I
20 tried.

21 Q. Now, I believe you also testified that there
22 was a key or keys for the second floor apartment where
23 Mr. Brown was arrested, the other gentleman?

24 A. Yes, where one of the keys worked at.

25 Q. Are you sure about that?

YVETTE PACHECO SENIOR COURT REPORTER

ROMERO - RE CROSS - DEFENSE

1 A. Believe so. That I checked back at the
2 office, because that lock had already been removed.

3 Q. With the keys you have now, you also have the
4 lock from the second floor?

5 A. Right.

6 Q. I'd like you to show me which key fits the
7 second floor.

8 A. That was back in November. I don't know which
9 key it is.

10 MR. KEITH: Your Honor, could we have the
11 evidence open to see if there is a key that fits
12 the second floor lock?

13 THE COURT: Sure.

14 MR. KEITH: We need the second floor
15 lock.

16 THE COURT: It was never seized?

17 THE WITNESS: No, sir, because the door
18 was opened.

19 Q. Didn't I just ask whether or not we had the
20 lock for the second floor?

21 A. That was the lock. We have the keys from the
22 second floor and the lock from the first floor. We
23 don't have the second floor lock. I made a mistake.

24 THE COURT: What's the first floor lock?

25 THE WITNESS: The second floor lock that

YVETTE PACHECO SENIOR COURT REPORTER

ROMERO - RECROSS - DEFENSE

1 he's talking about is Apartment 2. Apartment 1 on
2 the second floor, which Mr. Brown was arrested in,
3 we did not take that lock because that door was
4 open when we made entry.

5 Q. So, basically, we can't unequivocally show the
6 jury that any of the keys worked for the second floor
7 lock; isn't that fair to say?

8 A. No. It worked on the day of the arrest,
9 though.

10 Q. I'm saying right now.

11 A. Correct, sir.

12 Q. Thinking back to what happened inside the
13 apartment on the fourth floor, now, you say that you
14 got these keys from Mr. Green. Did you also recover
15 money from Mr. Green?

16 A. No. As I told you yesterday, he had money on
17 him and I put it in the envelope with all his other
18 property.

19 Q. Right. Were you the --

20 A. No, sir. No.

21 Q. Do you know who was?

22 A. Detective McLaughlin, I believe.

23 THE COURT: If there is such a person, I
24 don't know him. If there is a relationship, it's
25 hundreds of years ago in a place far away, and he

YVETTE PACHECO SENIOR COURT REPORTER

ROMERO - RECROSS - DEFENSE

1 might even spell his name incorrectly. But we're
2 not going to do the Hatfields and the McCoy thing.

3 Q. Detective Romero, without question, there has
4 been some passage of time, and your memory may have
5 faded. Are you certain that you are the person that
6 found the keys that were on Mr. Green?

7 A. Sir, that -- yes. I took it off his belt
8 because of the size of keys and put them on the couch.

9 THE COURT: If by "found" you mean "see,"
10 I don't know if anybody can know who saw it first.
11 If "find," you mean "removal" --

12 MR. KEITH: Removal would be more
13 appropriate, Your Honor.

14 A. Yes, correct. Correct.

15 Q. Now, obviously, based on the questions that
16 you heard in the case and your experience, you know how
17 important it is to be accurate and complete in your
18 paperwork; would you agree?

19 A. Yes, sir.

20 Q. And in this case, there are different items
21 found by different detectives, and when you prepare a
22 voucher, it's your responsibility and the other
23 detectives' involved responsibility to be as accurate
24 as possible; would that be fair to say?

25 A. Yes, sir.

YVETTE PACHECO SENIOR COURT REPORTER

ROMERO - RECROSS - DEFENSE

1 Q. Generally speaking, with regard to a voucher,
2 there is an indication of who is the finder of the
3 property; wouldn't that be fair to say?

4 A. Yes, sir.

5 Q. In this case, with your experience as a
6 detective, you and your fellow experienced detectives
7 were careful to indicate who the finder of the
8 particular item was; would that be correct?

9 A. Yes, sir.

10 Q. For example, you indicated that the money was
11 found by Detective McLaughlin. I assume you refreshed
12 your recollection and looked at the property voucher?

13 A. No.

14 Q. You have an independent recollection of that
15 particular thing?

16 A. The money was on him at the time of the
17 arrest. I left it in the pocket. Detective
18 McLaughlin, when he transported it, he vouchered the
19 property, the money.

20 Q. So, you just happen to remember that, or did
21 you look at the voucher?

22 A. That's how it happened, sir.

23 Q. I'm asking you, how is it that you -- it's a
24 relatively insignificant thing. How do you happen to
25 recall that? Did you refresh your recollection by

YVETTE PACHECO SENIOR COURT REPORTER

ROMERO - RE CROSS - DEFENSE

1 looking --

2 A. I did look over all the vouchers.

3 Q. Excuse me?

4 A. I looked over all my paperwork, but that was
5 the course of events.

6 Q. With regard to the keys, isn't it correct,
7 sir, that you were not the person that removed these
8 keys from Mr. Green?

9 A. As I told you before, I took them off his belt
10 because of the size. It could be used as a weapon.
11 Put them on the couch. Detective Hernandez then took
12 custody of all the property because I was down in
13 court. When they recovered -- Detective Hernandez is
14 the recovering officer on the vouchers because he was
15 there right with me.

16 Q. So, you anticipated where I was going.

17 A. I know exactly your questions.

18 THE COURT: It's more comfortable if you
19 wait for the question rather than answer what you
20 expect to be calling for.

21 Q. You admit again there's documentation that is
22 inconsistent with your testimony?

23 MR. BERLAND: Objection.

24 THE COURT: Sustained. You want to point
25 out a document, that's fine. Do not do it that

YVETTE PACHECO SENIOR COURT REPORTER

ROMERO - RECROSS - DEFENSE

1 way, please. Go ahead.

2 MR. KEITH: May this be marked
3 Defendant's G for identification.

4 (Defendant's Exhibit G was marked for
5 identification.)

6 THE COURT: Just read it to yourself.
7 When you are finished, look up.

8 A. (Complying.)

9 Q. Look at what has been marked Defendant's G for
10 identification. What is that?

11 A. This is a copy of the voucher for the keys.

12 Q. And it's correct that on the voucher, it
13 indicates that Detective Hernandez is the finder of the
14 property and not yourself?

15 A. Yes, sir.

16 MR. KEITH: I offer it as a prior
17 inconsistent statement.

18 THE COURT: Any objection?

19 MR. BERLAND: No, Your Honor.

20 THE COURT: It's in.

21 (Defendant's Exhibit G was received in
22 evidence .)

23 THE COURT: It's available to you. Same
24 thing you've heard the testimony being, you can
25 use this for whatever value you wish to use it.

YVETTE PACHECO SENIOR COURT REPORTER

ROMERO - RECROSS - DEFENSE

1 Q. Detective Romero, in your preparation for this
2 trial, would it be fair to say that you've had a few
3 conversations with Assistant District Attorney Berland?

4 A. Yes, sir.

5 Q. Certainly, one of the concerns was how to
6 connect Mr. Green to the drugs that were recovered in
7 the fourth floor apartment; wouldn't that be fair to
8 say?

9 A. No, sir.

10 Q. How is that not a concern?

11 A. He was in the apartment at the time of the
12 arrest.

13 Q. And you, of course, had conversation with
14 ADA Berland about the People's burden of proof?

15 A. We just went over the facts of the case, sir.

16 Q. Detective Romero, isn't it correct that when
17 you were getting pedigree information from Mr. Green,
18 or when you looked at his identification, you
19 recognized that he did not live at that location?

20 MR. BERLAND: Objection.

21 THE COURT: Two predicates in the
22 question, neither of which have answers from
23 yesterday's predicate. Namely, that he looked at
24 both of them, is what you said, the wallet and the
25 identification. The topic is fine. Whatever we

YVETTE PACHECO SENIOR COURT REPORTER

ROMERO - RECROSS - DEFENSE

1 did yesterday is fine.

2 Go ahead.

3 Did you see a wallet? Did you see an
4 identification?

5 THE WITNESS: As I said yesterday, no.

6 Q. The information that you put on your
7 paperwork, the Bronx address that you put down for
8 Mr. Green, where did you get that information from?

9 A. As I told you yesterday --

10 THE COURT: He said yesterday, because he
11 was down at the district attorney's office,
12 somebody else did that. I don't think he said who
13 it was. Somebody else filled out the on-line
14 booking sheet.

15 We're here because --

16 (Whereupon, a sidebar conference was held
17 on the record out of the hearing of the jury.)

18 MR. KEITH: I move again for a mistrial.
19 Your Honor, please let the witness answer the
20 question. You did not have to interject in that
21 manner.

22 THE COURT: Not if you can remember what
23 happened yesterday. I will not take any more time
24 than is necessary going over inaccurate, improper
25 predicates to yesterday. You had two predicates

YVETTE PACHECO SENIOR COURT REPORTER

ROMERO - RECROSS - DEFENSE

1 in the question, both of which you had gone over
2 with this witness significantly. There's no
3 reason to go forward with that question or that
4 topic.

5 MR. KEITH: Well, I think the appropriate
6 remedy would have been to sustain the objection
7 and force me to rephrase the question, not in
8 the -- I move from a mistrial.

9 THE COURT: Nonsense. Denied.

10 (Whereupon, the sidebar conference
11 concluded and the proceedings continued in open court
12 as follows:)

13 Q. Detective, I'm sorry, you've been a detective
14 for how long?

15 A. I've been a detective since 1997; 11 years,
16 sir. Will be 11 years in November.

17 Q. You, of course, have been trained in some
18 forensic?

19 A. Yes, sir, I have.

20 Q. With regard to any of the items, I guess it
21 would be fair to say that there was no forensic tests
22 done to the extent there was no attempt to find any ID
23 or fingerprints, anything to that extent?

24 A. No, sir, there was not.

25 MR. KEITH: No further questions.

YVETTE PACHECO SENIOR COURT REPORTER

ROMERO - REDIRECT - PEOPLE

1 THE COURT: Anything else, Mr. Berland?

2 MR. BERLAND: Yes, Your Honor.

3 REDIRECT EXAMINATION BY

4 MR. BERLAND:

5 Q. Detective Romero, that's Defendant's
6 Exhibit G. On the bottom, there is a remarks section.
7 Can you read that? It's in evidence.

8 A. "Above removed from defendant at the time of
9 arrest at 5781, has two keys that fits two locks on the
10 fourth floor of 451 Lenox Avenue."

11 Q. Item No. 1, what does that refer to?

12 A. The key chain.

13 Q. These keys?

14 A. Yes.

15 Q. Detective Romero, you didn't look for DNA or
16 fingerprints on the keys?

17 A. No, sir.

18 Q. Why not?

19 A. Wasn't necessary.

20 Q. Why not?

21 A. We only do fingerprints and DNA when we don't
22 know who possesses the property.

23 Q. How do you know who possessed this property?

24 A. It was removed from the defendant.

25 Q. By the way, were there any clothes or personal

YVETTE PACHECO SENIOR COURT REPORTER

ROMERO - RECROSS - DEFENSE

1 property inside of the fourth floor room?

2 A. No, sir.

3 MR. BERLAND: Nothing further.

4 THE COURT: Further questions, Mr. Keith?

5 MR. KEITH: Yes, Your Honor.

6 RECROSS-EXAMINATION BY

7 MR. KEITH:

8 Q. I wasn't referring to keys. I'm talking about
9 drugs, the safe, the narcotics, paraphernalia. Did you
10 do any DNA testing or photocopy testing on the items?
11 The keys were on his waist.

12 A. Still no, sir.

13 Q. Isn't it also correct that with regard to the
14 Defendant's G in evidence -- don't mean to restate
15 over -- there's nothing said about any of the keys
16 fitting the lock on the second floor; isn't that
17 correct?

18 A. That's correct.

19 MR. KEITH: No further questions.

20 THE COURT: Anything else?

21 MR. BERLAND: No.

22 THE COURT: You're excused.

23 (The witness was excused.)

24 THE COURT: Any other witnesses today?

25 MR. BERLAND: No, Your Honor.

YVETTE PACHECO SENIOR COURT REPORTER

PROCEEDINGS

1 THE COURT: So, we're back to Monday. Be
2 here at about 9:38 on Monday. On the day you are
3 asked to decide the case, once you assume certain
4 things happen, we take a lunch order from you.
5 You don't pay for it, so it will not be from the
6 fancy five-star restaurant.

7 If 14 people show up at 9:45, you will
8 not be in here until after 10. I'm suggesting
9 that you come at about 9:38. I will have the
10 lunch order taken. Get yourself ready, and 9:45
11 you will be available in the courtroom to do the
12 last day of the trial. And defense and the
13 Prosecution arguments will tell me what the law
14 is. As soon as you get here, the sooner we are in
15 position to discuss the case.

16 Don't discuss the case. Don't let
17 anybody try to influence your judgment in the case
18 or speak to you about it. The fact that someone
19 mentions it does not mean somebody will do what
20 it's required to do. I mention it to each jury in
21 every case.

22 Guess what? When I started, there
23 were 55 Supreme Court judges. Now there are 31.
24 So, I will be on the 13th Floor with you and this
25 case in another courtroom on Monday. It's

PROCEEDINGS

1 Room 1317, this building, 13th floor. Fellow who
2 will not be there is Carruthers (phonetic). If
3 you get disoriented, anybody with a uniform can
4 tell you where he is. Very famous fellow.

5 Please be able to start at 9:45.

6 (Jurors exit.)

7 THE COURT: Do we need to discuss
8 anything more about the charge conference? Do you
9 want to consider felony as a lesser on the first
10 count or are you still thinking about that?

11 MR. KEITH: Your Honor, with regard to
12 the second count, the intent to prove, are you
13 giving that charge to the jury?

14 THE COURT: Yes. Yesterday you asked me
15 to dismiss it, and I said that --

16 MR. KEITH: Even in light of the
17 testimony today, the keys he had clearly were not
18 for the second floor apartment. And the video
19 connection, or whatever other connection, is
20 somewhat tenuous. I don't think the People can
21 make out constructive possession theory or acting
22 in concert theory without the keys, without any
23 real connection to the second floor.

24 THE COURT: I disagree, but there's a
25 factual issue that you just raised about what the

PROCEEDINGS

1 witness actually said. I sure want to clear it up
2 before we leave. Not with the witness, but
3 between you folks and the jury. My recollection
4 of what he said were the keys on Mr. Green's belt
5 or key chain opened the second floor door. What
6 he said is they didn't take the lock, and he
7 cannot prove it, other than what he said. If I'm
8 wrong, tell me.

9 MR. KEITH: He did say that. The voucher
10 was admitted into evidence and doesn't say
11 anything about the second floor.

12 THE COURT: That is not --

13 MR. KEITH: I understand that.

14 THE COURT: Motion to dismiss the second
15 count is still denied. Anything else we need to
16 do today?

17 MR. KEITH: What do you anticipate? Are
18 there going to be any charges I should be aware
19 of? I know you will charge everything in the
20 indictment.

21 THE COURT: The answer is I don't believe
22 so. I've decided. Most recent trials have been
23 doing acting in concert charge, constructive
24 possession out of the CJI, and the basic charge
25 that I used the last several trials, a trial

PROCEEDINGS

1 judge -- that Judge Marru in Brooklyn has used
2 that was given at the summer judicial training
3 that I took in June. I no longer use the Goodman
4 book charge.

5 No, there's nothing that you cannot
6 anticipate. It's all out of CJI. The only
7 variant, if there are answers to the questions I
8 have to come up with, but that will not happen
9 during the deliberations.

10 MR. BERLAND: You mentioned the
11 consciousness of guilt. We'll ask for that at the
12 conference.

13 THE COURT: This sounds like this is the
14 conference. How do you propose that be given to
15 the jury?

16 MR. KEITH: Conscious of guilt because he
17 sat there?

18 MR. BERLAND: Because he ran up into the
19 apartment, the door slammed, and then sat there.

20 THE COURT: Sustained. I will not give
21 that. You can argue it. If nobody identified him
22 and there are, as we discussed, any number of
23 potential people who ran somewhere and slammed
24 something, there is no way, so to speak, to pin
25 that on Mr. Green.

PROCEEDINGS

1 MR. KEITH: With regard to any adverse
2 inference drawn from the testimony that Mr. Green
3 did not open the door or that he sat in the
4 apartment, I don't know what the jury will accept
5 with regard to that. I would think there is no
6 adverse inference because he didn't do something.

7 THE COURT: Berland can argue whatever he
8 wants about that as a factual matter. If you want
9 me to say neither Mr. Green nor anybody would be
10 required under the circumstances to answer their
11 door, I would be glad to.

12 MR. KEITH: Please, Your Honor. I don't
13 think Mr. Berland should be able to argue. With
14 regard to ADA Berland, I don't think it would be
15 fair or proper to allow him to argue that there
16 should be some negative inference drawn because
17 Mr. Green exercised his constitutional right to
18 sit there and not do anything.

19 THE COURT: I wouldn't put in the realm
20 of constitutional rights, because you are
21 analyzing it to the right to remain silent after
22 being arrested and being questioned while you are
23 in custody. Those two things mandate the giving
24 of the Miranda warnings and then a decision by an
25 accused specifically to speak or not.

PROCEEDINGS

1 While actions can and often are nonverbal
2 communications, Mr. Green was not arrested and
3 certainly was not being questioned at the time of
4 the knocking and his supposed hearing of the
5 knocks and supposed refraining from opening the
6 door, the People can argue to the jury that means
7 something. I will tell the jury that legally
8 there is no law that says he can't do it, and I'll
9 do that.

10 MR. KEITH: Well, he doesn't have to
11 respond, and there should be no adverse inference
12 drawn from that.

13 THE COURT: I disagree. We are --

14 MR. KEITH: That's what the Court of
15 Appeals says.

16 THE COURT: No, it doesn't. It doesn't.
17 We're, once again, back to the disagreement.
18 There is a way to resolve it, but not between you
19 and me.

20 MR. KEITH: There could not possibly be
21 an inference of criminal intent by him sitting
22 there. That's what he wants to argue. That's
23 part of the problem with this case. He can argue
24 it because things are --

25 THE COURT: In the absence of a better

PROCEEDINGS

1 mind than he's got, I'm searching for a similarity
2 or an analogy with respect to -- the closest one
3 is the missing witness situation where one or both
4 sides -- sorry, one side asks that the Court tell
5 the jury that they may draw an adverse inference
6 as a matter of law, that the law supports this if
7 you decide that a party should have called a
8 witness.

9 Oftentimes, however, for the reasons
10 contained in the Gonzalez case, the law would not
11 support, as a matter of law, that the jury must or
12 should draw a certain conclusion, but that never
13 prevents the side who wanted the law to support
14 them, it never prevents that side from arguing as
15 a matter of fact, common sense, et cetera; that
16 the witness not being called by that other side,
17 the jury should realize that there is something
18 strange about that. And the jury factually can
19 decide something against the person, but not have
20 the law support from that. That's the closest I
21 can come to where we are here.

22 MR. KEITH: Your Honor, I --

23 THE COURT: I might be intransigent, but
24 you will not change my mind. I'm here for a
25 while. If you want to talk, go right ahead. I

PROCEEDINGS

1 will stand here and listen.

2 MR. KEITH: I appreciate your candor,
3 Your Honor. I'll forge ahead and try to do the
4 impossible.

5 Your Honor, there is a mixture here of
6 law, in fact. I think we agree on that. You are
7 allowing the prosecutor to make arguments and ask
8 the jury to reach certain conclusions or draw
9 certain inferences from behavior that the Court
10 has specifically said you should not draw a
11 criminal intent.

12 I think you will invite jury confusion
13 if, when Mr. Berland does his summation, he makes
14 the argument and then you explain to them that
15 they are not to draw such an inference. I think
16 the better practice is to not let ADA Berland make
17 the argument if Your Honor in turn will instruct
18 them that he cannot draw the inference.

19 THE COURT: You misunderstood what I said
20 I would do. It's not that I'm going to tell them
21 they cannot draw an inference. I will say there
22 is no constitutional prohibition or penalty to be
23 gleaned by a person not opening their door.

24 MR. KEITH: So, then you conclude to the
25 contrary, if that's a word, or you differ from the

1 Court of Appeals, because they're saying that you
2 cannot draw criminal intent.

3 THE COURT: I'm pummeled by the Court of
4 of Appeals. I do not disagree with them. The
5 answer is, no, I'm not saying that. What I'm
6 saying I said as best I can, with my limited
7 mental factual and meager experience. If it turns
8 out your client is convicted of something, I await
9 my fate when there is an appeal, but I'm
10 confident.

11 Please mark his card for Part 81 on
12 Monday. Please put him on the trial list for that
13 part.

14 -----
15 SUPREME COURT OF THE STATE OF NEW YORK
16 COUNTY OF NEW YORK PART-93

17 THE PEOPLE OF THE STATE OF NEW YORK

18 -against-

19 TRIAL

20 EDWARD GREEN,

21 Defendant

22 September 15, 2008

23 B E F O R E: HONORABLE E. MCLAUGHLIN, JSC
24

25 (Appearances as previously mentioned.)

YVETTE PACHEC PROCEEDINGS COURT REPORTER -----

1 THE CLERK: Case number one on the
2 Part 93 calendar, Edward Green.

3 MR. KEITH: I want to make sure I'm
4 clear. With regard to the second, third and
5 fourth counts of the indictment, that covers both
6 the second floor and the fourth floor?

7 THE COURT: Yes.

8 MR. KEITH: And you will give a credible
9 charge?

10 THE COURT: Absolutely.

11 It's just the four charges on the
12 indictment. Do you want me to tell them about
13 your client not testifying?

14 MR. KEITH: Absolutely.

15 THE COURT: Jury entering.

16 THE CLERK: Case on trial continues.
17 People of the State of New York versus
18 Edward Green. All parties and jurors are present
19 and properly seated.

20 THE COURT: Anything else from the
21 People?

22 MR. BERLAND: The People rest.

23 THE COURT: Mr. Keith, anything from the
24 defense?

25 MR. KEITH: No, Your Honor.

PROCEEDINGS

1 THE COURT: We will now go to the
2 summations. If you remember the order of the
3 trial, by law, the defense goes first, so we'll
4 hear from Mr. Keith.

5 MR. KEITH: May we approach?

6 THE COURT: Yup.

7 (Whereupon, a sidebar conference was held
8 on the record out of the hearing of the jury.)

9 THE COURT: I thought by the lack of --
10 it's my fault, I don't see the need to hear the
11 motion for the third time. The evidence is
12 finished. There's no defense case. I think if
13 you make a motion at the end of the People's case
14 and at the end of the entire evidence, which is
15 identical, it would be identical to what has been
16 made twice before. Let's assume you made it and
17 assume I denied it.

18 Is that an adequate record for your
19 purposes?

20 MR. KEITH: No. Can I add a little bit?

21 THE COURT: Why don't we do it later. Is
22 that accurate for your purposes?

23 MR. KEITH: Your Honor, I don't know if
24 legally that's the right way to do things. I want
25 to make sure the record is clear and all his

PROCEEDINGS

1 rights are preserved. I think I have to make the
2 motion now.

3 THE COURT: Whatever you feel like doing.
4 It's Monday morning and whatever you want to say.

5 MR. KEITH: Now that we have heard all of
6 the evidence in the case, I think it would be
7 appropriate for Your Honor to enter a trial order
8 of dismissal.

9 While Your Honor has been privy to
10 information that the jury hasn't heard, I know
11 Your Honor is acutely aware of the fact that
12 there's been three different versions of what
13 happened back on November 1, 2007. I submit that
14 it's impossible to reconcile the different
15 versions of what supposedly happened back on that
16 date. I believe I got the phrase "there's only
17 one truth" from Your Honor. I would think that
18 your conscience has to be somewhat troubled by the
19 testimony of Detective Romero and the differences
20 in the Grand Jury testimony, the affidavit for the
21 search warrant, the testimony that he gave you in
22 that Darden hearing and what he said in the
23 courtroom to this jury. This case is nothing
24 short of an outrage. The fact that ADA Berland
25 has had his hands all over the case from the

PROCEEDINGS

1 beginning to the end and brought this forth in
2 this court in this manner. Your Honor has already
3 ruled that the behavior was illegal and now for
4 them to come in and add more to it, Your Honor
5 should bring this to an end right now.

6 THE COURT: Do you want to say anything?

7 MR. BERLAND: I rest on the record, Your
8 Honor.

9 THE COURT: This situation in the posture
10 in which the legal system in the year 2008 is,
11 really does not permit me to do a thing, since
12 35NYS has been the Brown case which says judges at
13 my level shouldn't be granting trial orders of
14 dismissals because it removes from the prosecution
15 any objection of appeal. The case would be a dead
16 duck at that point.

17 Perhaps your assessment of my instinct
18 and my reaction is relatively if not largely
19 accurate. I was afraid after the Darden hearing
20 of saying that the entire thing had to be
21 dismissed since I don't get to act, however, on my
22 own personal feelings now or whenever on whim or
23 caprice, but I'm required to figure out as best I
24 can with my humble mentality what the law is and
25 having been implored and impleaded not to toss the

PROCEEDINGS

1 case out of pique perhaps or an assessment of
2 credibility, I didn't think and researched and
3 that's why I had to invoke in my opinion the rule
4 regarding standing that oftentimes causes people
5 to be mystified, namely that there could be a
6 recognized error, perhaps intentional error or
7 misstatement, defraud or deceit, et cetera, et
8 cetera, et cetera, et cetera all of resulting in
9 suppression of evidence, but that the person on
10 trial doesn't get the benefit of it. It's called
11 the standing rule. Of course, we're going to
12 review this if there is a conviction, as I assume
13 all three of us, so the motion is denied.

14 MR. KEITH: Your Honor, briefly, with
15 regard to the Brown decision and the rules
16 enunciated on the 290, I believe Your Honor can
17 reserve decision and the People would still have
18 the right to appeal.

19 THE COURT: That's absolutely correct,
20 but it's correct as a matter of law, not on facts.
21 If a jury decides that there is a connection, it's
22 again, virtually impossible for me, a trial judge,
23 to say that as a matter of law there is no basis
24 connecting your client to whatever he may be found
25 guilty of. That really is an Appellate issue

SUMMATION - DEFENSE

1 properly brought by the defendant. Let's wait
2 until we get there. If I were to say the word
3 reserved, undoubtedly I'll hear the argument a
4 fourth time and I choose not to do it, so the
5 motion is denied.

6 (Whereupon, the sidebar conference
7 concluded and the proceedings continued in open court
8 as follows:)

9 THE COURT: In a moment, we're ready for
10 Mr. Keith's summation.

11 MR. KEITH: Good morning, ladies and
12 gentlemen of the jury. I want to start by
13 thanking you for your time and attention in this
14 case.

15 I feel like an apology is in order
16 because when we started this last Tuesday, I
17 certainly do not think any of us anticipated that
18 it would take as much of your time and attention
19 as it has, but I also think that even though we
20 have only heard testimony from two witnesses, I
21 would imagine that this has been somewhat of a
22 learning experience for all of us and possibly
23 even a wake-up call.

24 I implore you, I want you to deliberate
25 and discuss this case amongst yourselves. When

SUMMATION - DEFENSE

1 I'm done, of course, ADA Berland will make his
2 arguments and then the judge will instruct you on
3 the law.

4 You all promised that you would
5 deliberate and talk about this case and I
6 certainly want you to do that. This is an
7 experience I think you should also share with
8 family and friends. I want you to discuss and
9 talk about how intense, just testimony from two
10 witnesses, how intense the assistant district
11 attorney was and is as the evidence certainly
12 revealed.

13 He has been a part of this case from the
14 very beginning. This is his case. This is the
15 way it was presented to you. He and his very
16 experienced detective, Detective Romero in
17 particular, convinced the judge to sign a search
18 warrant, actually search warrants.

19 I think it's pretty evident that the
20 initial search warrants were based on bad
21 information. The description of the building was
22 totally wrong. I want you to talk about that,
23 think about that. The case started with bad
24 information before November 1st and continued with
25 bad information on that date and since then. As I

SUMMATION - DEFENSE

1 said, the initial bad information was the wrong
2 description of the layout of the building.

3 Now, what I'm saying now is not evidence
4 and what the prosecutor said in the opening
5 statement is not evidence. What he's about to say
6 in the summation is not evidence, but you may
7 recall he said something about the building was
8 converted into an SRO.

9 You can take a look at the pictures, and
10 there was no recent conversion. The building has
11 been the way it is for a long period of time. The
12 picture makes it very clear that there's no sign
13 of any recent construction, any new construction,
14 anything to that effect.

15 The other bad information that came out
16 on November 1st and it is an important piece of
17 information, is the keys that they got from the
18 second floor. The assistant district attorney and
19 the officers made it sound as though those keys
20 were gotten from Steven Brown, but a precise
21 statement is the keys were in a jacket next to
22 where Steven Brown was sitting.

23 We heard nothing else about this jacket,
24 whether or not it fit Steven Brown, whether or not
25 it was a man's jacket or woman's jacket, nor any

SUMMATION - DEFENSE

1 identification belonging to Steven Brown. I think
2 when there was some Q and A about that during the
3 trial, the judge may have interjected and said
4 something about constructive possession or
5 something to that effect, but none of that has
6 been fleshed out.

7 The precise facts are that the detective
8 found some keys in a jacket next to this man
9 Steven Brown, and with those keys, ladies and
10 gentlemen, I think the evidence is clear, they
11 went to every apartment in this building.
12 Detective Romero would like us to believe that
13 they went straight up to the fourth floor
14 apartment and then checked the other apartments.

15 Ladies and gentlemen, I ask you to use
16 your common sense. These detectives did what they
17 wanted to do on that date. They went to every
18 apartment. Let's talk about first grade detective
19 Alfred Hernandez, second grade detective Anthony
20 Romero. The evidence and lack of evidence that
21 was presented to you.

22 Ladies and gentlemen, I submit to you
23 that the case is a very weak case. It's built on
24 reasonable doubt. It certainly appears that what
25 happened on November 1st, these detectives and ADA

SUMMATION - DEFENSE

1 Berland made a rush to judgment and made some
2 decision that day and obviously affects my client,
3 Mr. Edward Green. There was absolutely no
4 investigation done as to who were the apartments
5 were leased to.

6 I don't have the burden of proof here.
7 You can't shift it to me and force me to do
8 things. Mr. Green has no burden of proof. The
9 law says they have the burden of proof. They have
10 to prove the elements of the crimes charged beyond
11 a reasonable doubt. You can't shift it.

12 Edward Green certainly did not live at
13 451 Lenox Avenue. Now, I know the district
14 attorney, when he stands up here, he will wave the
15 keys around and try to make his case out and
16 suggest that because Mr. Green had keys to just
17 about everything in that building, that somehow he
18 has the combination to the locks in the safes and
19 therefore the drugs are his or something to that
20 effect. Speculation, ladies and gentlemen.

21 When I finish, you will see that almost
22 each and every piece of critical information in
23 this case has been rebutted by the detectives' own
24 testimony. The Polaroid pictures. Here, in 2008,
25 I am surprised that you can still get film for a

SUMMATION - DEFENSE

1 Polaroid camera. When was the last time somebody
2 used a Polaroid camera? Are they serious? What
3 about any forensic work, ladies and gentlemen,
4 DNA, fingerprints?

5 It appeared to me that Detective Romero
6 was almost annoyed because in his mind, oh, the
7 guy is in the room, clearly he's guilty. In his
8 mind, there's nothing else to be done. What
9 happened with these very experienced detective?
10 This is 2008. The technology is here. There's no
11 excuse.

12 Now, during this trial, there certainly
13 was some laughter and funny moments. Certainly
14 the laughter is good to counteract the stress, but
15 ladies and gentlemen, the charges are very serious
16 charges. These are very serious accusations made
17 against Mr. Green. All the laughing and joking is
18 over.

19 We are in the Supreme Court of New York
20 County, and the first count of the indictment
21 charges him with Criminal Possession of Controlled
22 Substance in the First Degree, the highest and
23 biggest drug charge in New York State. This is
24 the way the case is handled and presented to you.
25 Please deliberate and talk about this case. Talk

YVETTE PACHECO SENIOR COURT REPORTER

SUMMATION - DEFENSE

1 about how easy it is to be accused of a very
2 serious crime.

3 I want you to think about the rush to
4 judgment and the conclusions and deliberations
5 that were made back on November 1, 2007. Think
6 about it, ladies and gentlemen. You can go to
7 someone's house, someone's apartment or you could
8 be working and there is a heat sealer on the
9 floor, a digital scale.

10 By the way, I cook a little bit, my wife
11 does some cooking. I don't think I've ever seen a
12 digital scale. How are we to assume, Mr. Green,
13 even if he were sitting right next to a digital
14 scale, would know what it is?

15 If I understood the testimony correctly,
16 they saw a digital scale on a rack and the other
17 scales were recovered from the inside the closet.
18 On a glass top table, there was testimony that
19 there was cocaine residue. I think we all agree
20 that the more precise language, if there was some
21 white powder on the table, would have been to say
22 white powder.

23 But, ladies and gentlemen, there's the
24 Polaroid pictures, and I submit, if you look
25 carefully at the pictures, you do not see any

SUMMATION - DEFENSE

1 white powdery substance. So the arguments or
2 statements that were made to get the search
3 warrant, that were made in the opening statement,
4 that were made throughout the trial about cocaine
5 residue, it really means nothing. It really means
6 nothing.

7 I mean, I'm asking you not to accept the
8 testimony from these detectives because you don't
9 know what to believe, you do not know what the
10 truth is. There are too many versions coming from
11 these guys.

12 With respect to those items that were in
13 the room with Mr. Green, the heat sealer on the
14 floor, the digital scale that I believe was on the
15 TV rack, this glass top table with the white
16 powder on it, I also believe there was a box of
17 Ziploc sandwich bags on the counter that looks
18 like a fireplace, a picture of those items are
19 also in evidence, People's Exhibit 21.

20 THE COURT: What do those items mean?
21 You can look at the picture. You can see the box
22 with the Ziploc bags. I don't see any white
23 powder. You can look at it for yourself. It's in
24 evidence. Now, there was testimony that when the
25 police got to this location, before they executed

SUMMATION - DEFENSE

1 the search warrant, that they sent -- I believe
2 they described it as a walk-on to the building.
3 According to what the detective said, somebody
4 came out of the building and then they went in,
5 they made their move.

6 Nothing else was said about the person
7 that left the building. They didn't get any
8 identification from the person. At least there
9 was no testimony about that. It appears to me
10 that under the circumstances of this case, with
11 them having a warrant at that time, they should
12 have at least stopped the person and did some sort
13 of investigation. There was nothing said about
14 that.

15 Ultimately, they get in the building and
16 according to the detective, the first team rushed
17 in and used the battering ram on the door that
18 they thought would lead them to a third floor
19 apartment, but it was the third floor of the
20 building and there were four apartments up there
21 and then they go into the second floor of that
22 building and they say the door was wide open and
23 Steven Brown, their testimony is that they got the
24 keys from Mr. Brown.

25 Now, what about Mr. Green? Why is he in

SUMMATION - DEFENSE

1 the apartment? Is he a visitor? The volume of
2 keys must suggest that he must work in the
3 building, that he had access to the laundromat and
4 the other apartments. Was he set up? Did he go
5 into the apartment and did the owner leave him
6 there? Was the owner of the building the person
7 that left the building? These are questions that
8 we have no answers to.

9 Ladies and gentlemen, I'm begging you not
10 to shift the burden of proof. You will get legal
11 instructions from the judge. I will ask you to
12 follow the law that the Judge gives you and also
13 asking you to use your common sense.

14 The prosecutor will try to argue that
15 Mr. Green and Mr. Brown were working together.
16 The law says it's acting in concert. I submit to
17 you that there is no evidence that supports that
18 beyond a reasonable doubt. Start with the
19 misstatements that the keys were recovered from
20 Mr. Brown.

21 When ADA Berland and Detective Romero got
22 a judge to sign the search warrant for the fourth
23 floor, which I submit to you, ladies and
24 gentlemen, based on what we heard from Detective
25 Hernandez. I submit to you that the apartment was

SUMMATION - DEFENSE

1 searched well before they got the search warrant.

2 I think if you think back to the
3 testimony of Detective Hernandez, you'll remember
4 that he just went on, and, I don't know,
5 describing how they went into the closet, got the
6 safes out, banging away with the sledgehammer. He
7 forgot that they should have said they stopped to
8 get a search warrant. I believe that mistake was
9 the way it really happened.

10 I submit to you, ladies and gentlemen,
11 that these detectives, they did what they wanted
12 to do back on November 1, 2007. The
13 misstatements, the misleading statements that we
14 heard from Detective Hernandez and from Detective
15 Romero are numerous.

16 Now, when I cross-examine the detectives,
17 I mean it's obvious that I shouldn't expect them
18 to go out of their way to, you know, respond
19 appropriately to my questions or to give me the
20 answers that I want to hear, but I certainly did
21 not expect them to make misstatements or have a
22 convenient memory loss when I asked them a
23 question. I didn't think they would get up there
24 and try to mislead you.

25 There were little things and there were

SUMMATION - DEFENSE

1 big things. One of the big things, I tried to get
2 this picture of the front of the building into
3 evidence. You may recall the difficulty that I
4 had when I questioned Detective Hernandez and
5 Detective Romero, and they both claimed that they
6 do not recall the wires. I think Detective Romero
7 took a step further and he says, Oh, yeah, I don't
8 even remember seeing the air conditioners in the
9 window.

10 And it's true. These pictures,
11 obviously, were taken after November 1st. I'm
12 sure the prosecutor will argue about that. But,
13 ladies and gentlemen, look carefully at the
14 pictures. You see there are wires going to every
15 apartment. The video system in that building had
16 been in place for years and those wires went to
17 every apartment. The building had a locked door.
18 You had to be buzzed in and the tenants could
19 check to see who was buzzing. It's as simple as
20 that.

21 But these detectives came in here with a
22 whole different story. And, I don't know, is the
23 ADA going to argue that sometime after the
24 incident, that I or the tenants added these wires
25 to the building? It doesn't make any sense,

SUMMATION - DEFENSE

1 ladies and gentlemen. I mean, you know, what was
2 that all about?

3 The detective came in here and tried to
4 mislead you about a material part of this case.
5 This is the -- this is part of the connection
6 they're trying to make between the second floor
7 and fourth floor, between Steven Brown and
8 Edward Green. You look at this and it's like,
9 what is he talking about? How could he forget
10 that? How could he not remember this?

11 I can't believe that you will accept, I
12 don't know, what the DA will argue, but I can't
13 argue and say I did this or the tenants did this.
14 I think that's too absurd.

15 With regard to the air conditioners,
16 well, the Polaroid pictures, they're bad pictures.
17 The DA conceded that, but if you take a look at
18 People's Exhibit 16, also a picture of the second
19 floor, and if you look carefully at the picture,
20 there clearly appears to be an air conditioner in
21 one of the rear windows.

22 Just sort of destroys that silliness that
23 Detective Romero was talking about, that, you
24 know, he didn't remember the air conditioners. He
25 just didn't give it to us straight. Whatever I

SUMMATION - DEFENSE

1 asked him, it was like it was pulling teeth or
2 something.

3 Another example of that, try when the
4 keys that Mr. Green had on him were introduced
5 into evidence. Detective Romero testified amongst
6 the keys, there was a key for the second floor. I
7 challenged him on that. I was ready to do a
8 demonstration, see which one fit in the lock in
9 the second floor.

10 We got the evidence out and you saw what
11 happened. We get scissors from the court clerk
12 and I'm about to cut the bag open and then I
13 realize when I take a look at the evidence and the
14 paperwork associated with the evidence, that
15 that's not even the second floor lock.

16 I submit to you, ladies and gentlemen, it
17 was pretty clear that the detective knew that and
18 ADA Berland, too. They were about to let me open
19 the bag with the fourth floor lock to do a
20 demonstration that would have been impossible to
21 do for what I was trying to do at that time. The
22 connection between second and fourth floor is very
23 tenuous, very weak.

24 Detective Hernandez testified about
25 recovering stuff from the garbage. He made it

SUMMATION - DEFENSE

1 seem as though the bags of garbage were fairly
2 close to the door of the apartment. If you look
3 if you take a look at the pictures, a small
4 apartment. They found some stuff in the garbage.
5 The way Detective Hernandez has it, the bags of
6 garbage were I believe he said to the left of the
7 couch, which would put it right by the door.

8 But if you think about the testimony of
9 Detective Romero -- I guess you have to decide
10 which version to accept. He comes in with the
11 shield, bunker and gun out. It seems he would
12 have run right into the bags of garbage.

13 Whatever the testimony, it is so
14 convoluted that I don't think there is anything
15 there that you can conclude and make decisions on.

16 Now, another indication that I imagine
17 connects the apartments the assistant will argue
18 when I'm done is that there were bags found on the
19 second floor that had the Big Apple or red apple
20 marking on it and in the closet on the fourth
21 floor, there were similar types of bags found in
22 the closet.

23 Ladies and gentlemen, I ask you to take a
24 look at the bags. I forget what exhibit they are,
25 but those bags, just from looking at them, they

SUMMATION - DEFENSE

1 are made that way. It's not like there was a
2 stamp put on them. They are rolls of bags and
3 that's the way they're made.

4 If you recall, Detective Hernandez, in
5 one of his rare moments of honesty and clarity,
6 admitted that the bags were relatively common.
7 He's seen them before in other investigations and
8 fairly easy to buy.

9 The video connection between the second
10 floor apartment and the fourth floor apartment, as
11 I stated earlier, I submit that that's bogus. The
12 detective testified that they never saw a working
13 monitor or TV in the fourth floor apartment. They
14 tried to explain that away by saying that the
15 camera that was posted downstairs by the door had
16 been removed before they looked at the monitor.
17 Well, it appears that that is certainly something
18 they concocted for the trial.

19 I certainly want you to consider the
20 sworn truth of the testimony that Detective Romero
21 gave to Judge McLaughlin in the pretrial hearing.
22 He told Judge McLaughlin that he was able to see
23 from the monitor and he was able to see the
24 street. How do you reconcile that? He told the
25 truth there, telling us the truth in the

SUMMATION - DEFENSE

1 courtroom. What is the truth? There is only one
2 truth. There is no way to reconcile it, ladies
3 and gentlemen.

4 The Court said: Inside the room on the
5 fourth floor where the fellow was, he was sitting
6 in the room on a couch?

7 Detective Romero: Yes, sir.

8 The Judge: Did you open the lock that
9 got you in there or was it somebody else whom you
10 watched do it?

11 Let's stop for a moment. Why do you
12 think the judge asked him that question?
13 Obviously, the judge had information that there
14 was either a police report, something that caused
15 the judge to ask him, "was it somebody else you
16 watched do it?"

17 But Detective Romero, in his honest and
18 forthright testimony says:

19 No, I opened the door. Before we did it,
20 once I noticed the key turn, I banged on the door,
21 announced that it was the police, if anyone was in
22 there, to come out. There was no response. I did
23 it again. I opened the door. The room was
24 totally dark. I shined my flashlight in the room.
25 So the gentleman sitting on the floor was

SUMMATION - DEFENSE

1 crouched, just sitting there in the dark. At that
2 time, we took him into custody, brought him out.
3 Once we turned the lights on in the apartment,
4 that's when we saw all the paraphernalia.

5 The Judge asks him: Among the
6 paraphernalia was, of course, the TV monitor?

7 The witness goes: Correct, sir.

8 The Judge: Was it working?

9 Detective Romero: No everything was off.
10 The room was totally black at that time.

11 The Judge: Did you ever figure out how
12 to turn the monitor on?

13 Yes.

14 When you turned it on, could you see the
15 street?

16 He told the Judge yes. He told us that
17 he couldn't see anything on the monitor and his
18 explanation was that the camera had already been
19 removed.

20 Now, part of your function as jurors is
21 to deliberate and discuss things like this and try
22 to reconcile the differences. The judge will
23 instruct you, give you some instructions on how to
24 do that. One of the things he'll tell you is that
25 when you're evaluating the credibility of a

SUMMATION - DEFENSE

1 witness, and, again, his instructions are what
2 control, you can accept some of the testimony or
3 reject other parts of the testimony or if you feel
4 as though the information is to a material fact,
5 you can reject all of their testimony.

6 Ladies and gentlemen, that's what I am
7 asking you to do because this case is so important
8 and these detectives, they came in here, and they
9 weren't straight with us. They weren't honest
10 with us. They weren't direct with us, and no one
11 should be convicted on this type of testimony.
12 I'm asking you to reject their testimony.

13 These detectives came in here with a
14 one-track mind, to try and get a conviction
15 instead of being honest and forthright with their
16 testimony. Their explanation about the picture,
17 about the wires is outrageous. They do not
18 remember, they do not recall seeing the wires. So
19 what does that leave us? I went there and put the
20 wires up? The tenants put the wires up? The
21 wires were there, always there, ladies and
22 gentlemen.

23 These guys just lied to you. Both
24 detectives' credibility leave a lot to be desired.
25 The suggestion that these apartments were recently

SUMMATION - DEFENSE

1 converted to SROs is laughable. Look at the
2 pictures. There is no evidence, no suggestion of
3 any new construction or recent construction. It's
4 clear that the building has been like it is right
5 now, it's been that way for years.

6 These officers, these detectives tried
7 too hard to get a conviction when they just needed
8 to come in here and be straightforward and honest.

9 In his opening remarks, and again, what
10 I'm saying now is not evidence, the opening
11 remarks are not evidence, the closing remarks are
12 not evidence, but in the opening remarks the
13 assistant district attorney suggested that the
14 detectives used caution. Ladies and gentlemen, I
15 submit that these men went through that building
16 and did what they wanted to do.

17 They were being cautious to a degree, but
18 they just took over and went door to door in a
19 systematic search of this building, harassing
20 people, terrorizing people, just doing what they
21 do.

22 I submit, they didn't even wait for the
23 search warrant for the apartment on the fourth
24 floor, and Detective Hernandez in his testimony,
25 basically said it.

SUMMATION - DEFENSE

1 Ladies and gentlemen, you all promised to
2 follow the law. The burden of proof is on the
3 assistant district attorney, Mr. Berland. It
4 hasn't shifted. Mr. Green and I do not have to
5 prove anything. There is a presumption of
6 innocence.

7 There is no proof. You should not even
8 think about a conviction when you're not even sure
9 what happened, what version of this incident is
10 the truth for none of the charges. The first
11 charge is Criminal Possession of a Controlled
12 Substance in the First Degree. The drugs were in
13 a locked safe.

14 As the prosecutor brought out, there's no
15 evidence, there's nothing to suggest that
16 Edward Green had the combination of the safe or
17 even knew the safes were in the closets. The
18 Judge will instruct you on constructive
19 possession, not guilty.

20 One of the other charges is Criminal
21 Possession of a Controlled Substance in the Third
22 Degree. And the paraphernalia charges, with
23 regard to the stuff that was -- going backwards,
24 start with the paraphernalia charges, with the
25 stuff that was in open view when the detective

SUMMATION - DEFENSE

1 entered the room, I submit to you that none of
2 those items so clearly represent a conviction to
3 drug usage that Mr. Green is guilty beyond a
4 reasonable doubt of having knowledge of it.

5 I submit to you that a person involved in
6 drug trafficking may recognize that some of the
7 items can possibly be used. The heat sealer on
8 the floor or if he even recognized the digital
9 scale that was on the TV stand, the Baggies are
10 regular Ziploc sandwich Baggies sitting on the
11 counter.

12 And the alleged white powder. Well, I
13 don't know what you are going to conclude about
14 that. If you believe that there was a white
15 powder --

16 THE COURT: Give him a tap. I want to
17 make sure you hear this. I didn't mean to
18 embarrass you.

19 MR. KEITH: With regard to the white
20 powder, I don't know what you will conclude about
21 that. If you believe there was white powder or
22 not, the ADA, in his opening remarks, I imagine he
23 would repeat something about it being sprinkled
24 all over the place.

25 If you look carefully at the Polaroid

SUMMATION - DEFENSE

1 pictures, I don't see any white powder. The
2 detective and the assistant, they refer to the
3 white powder as cocaine residue, but, if there was
4 white powder, it wasn't tested. There is no
5 evidence of it being tested. It's like -- I don't
6 know what you do with that. It's reasonable
7 doubt.

8 I submit that the whole house was wired,
9 all nine apartments. On another note, when they
10 enter the apartment, I believe the prosecutor will
11 make an argument to the effect that yes, in his
12 mind, Mr. Green was supposed to get up and open
13 the door for them. I believe you will get an
14 instruction from the judge that he had a right not
15 to do that.

16 Ladies and gentlemen, I ask you to
17 combine the law with your common sense. If we
18 accept the version, the version that is given to
19 us by, I believe this version is very contrived,
20 but the version given to us by Detective Hernandez
21 and Detective Romero that they grabbed this shield
22 or the bunker thing and rushed into the apartment
23 with his gun out, what would you expect Mr. Green
24 to do under those circumstances? I certainly
25 wouldn't move, I don't think anybody else in here

SUMMATION - DEFENSE

1 would move under the circumstances, but that's if
2 you accept the version.

3 You recall there is an earlier version
4 when they spoke directly to the judge and it
5 didn't happen that way. Again, how are you going
6 to decide and make inferences. He's going to
7 argue that there's some guilt involved in that,
8 but you're not sure what happened.

9 There is only one truth. Either it
10 happened one way, the other way or somewhere in
11 the middle. I guess you will have to reconcile
12 that and figure that out. That's something that
13 you are going to have to discuss when you are
14 deliberating.

15 He told the judge that he had a
16 flashlight and took him into custody and brought
17 him out. But he told you that he had the shield,
18 the bunker and a gun in his hand. I don't know,
19 how do you reconcile those two things?

20 There's still the question of him opening
21 the door. Some of you may be sitting there saying
22 Well, why didn't he just open the door? I submit
23 to you, ladies and gentlemen, like most of the
24 other people in that building it was probably just
25 simply intimidating. He didn't want to open the

SUMMATION - DEFENSE

1 door, he didn't want to be bothered with the
2 police.

3 I think that this issue, that it's a
4 matter of perception, the different environments
5 that we live in. I submit that some people just
6 don't want to be bothered with the police.

7 I know that's probably contrary to the
8 way many of you were brought up. If there is a
9 problem, you go to the police, but for some of us,
10 we hesitate to do that, and we have a right not
11 to, and I argue that there should be no negative
12 inference drawn from the fact that Mr. Green
13 didn't get up and open the door for those police
14 officers.

15 Some of us only go to the police when
16 it's absolutely necessary. It's just the way it
17 is. Unfortunately for some of us, the
18 relationship with the police department, you know,
19 makes it that way. Last year in 2007, 19 black
20 men were shot by the police, ten were killed --

21 MR. BERLAND: Objection, Your Honor. I
22 don't know what this has to do with the trial.

23 THE COURT: I hope you're not
24 interjecting an issue into this trial that has no
25 place.

SUMMATION - DEFENSE

1 Sustained. Disregard it.

2 MR. KEITH: So, ladies and gentlemen,
3 what's the truth? How do you evaluate the
4 testimony you heard in this case from the
5 detectives. I submit their techniques and their
6 testimony should be rejected. Their lack of
7 investigation, rejected.

8 When you go back to talk about the case,
9 I ask you to take another look at the pictures, in
10 particular Defendant's E in front of the building
11 with the wires. I ask you to take a look at
12 Defendant's Exhibits B and C, the layout of the
13 apartment on the second floor and fourth floor.

14 I believe Detective Hernandez said
15 something about a black garbage bag covering the
16 window or something to that effect. Again, the
17 prosecutor will argue and rightfully so that the
18 pictures were taken after the incident. The black
19 garbage bag, I submit, is something created. It's
20 just not there.

21 People's Exhibit 22, the detective
22 suggests that this picture came from the fourth
23 floor apartment. Now, in this picture, in the
24 background, you can clearly see that there are
25 some Venetian blinds. It's just inconsistent with

SUMMATION - DEFENSE

1 everything we have heard. If there is the black
2 garbage bag or whatever, it's certainly not
3 reflected in this picture. I think the detective
4 made a mistake.

5 If you look at the other Polaroid
6 pictures, you will see that in the second floor,
7 that there's some windows with some Venetian
8 blinds on it. Actually, if you take a look, I
9 referred to it before, at People's Exhibit 16, it
10 appears, and it's hard to tell, but it appears
11 that item might be sitting right here to the left
12 center of the picture. This item here appears to
13 be the air conditioner. Take a look at the
14 pictures.

15 I think the picture somewhat -- further
16 undermines the information or the misinformation
17 that these gentlemen, these detectives gave you.

18 I submit that it's absolutely clear that
19 Mr. Green did not live at that location. The
20 evidence, the number of keys suggests that he may
21 have worked there as a superintendent. I'll
22 concede that I didn't put on a case, but, I ask
23 you to consider my argument and to use common
24 sense.

25 One of the items admitted into the

SUMMATION - DEFENSE

1 evidence, Defendant's Exhibit G, I used this
2 property voucher to cross-examine Detective Romero
3 with regard to his statement that there were keys
4 for the second floor. In the bottom part of this,
5 there is a narrative that describes, you know,
6 where they got keys from and what they were for.

7 I submit to you, ladies and gentlemen,
8 that if there were a key or keys for the second
9 floor, you would have included it, and I submit to
10 you that there was no key for the second floor,
11 that the connection between the fourth floor and
12 the second floor just doesn't exist.

13 The other thing in the document that's
14 now in evidence and that you can read, Edward
15 Green lives at 1133 Ogden Avenue in the Bronx. I
16 know I questioned the detective about that, about
17 whether or not he had a wallet or whether or not
18 he had any identification on him. Again, the
19 detectives, they both sandbagged me and claimed
20 that they didn't recall, they don't recall.

21 I submit to you, ladies and gentlemen, if
22 it was a situation where he did not have any
23 identification, they would have said something
24 about it. They had -- on one hand they tried to
25 argue and suggest that Mr. Green didn't cooperate

SUMMATION - DEFENSE

1 with him at all, he just sat there and didn't do
2 anything. Then, on the other hand, I guess the
3 suggestion is maybe he told them this address.

4 I submit that that is not the case. They
5 had his identification. They looked on it. They
6 got his address, and that's what's included in the
7 police reports.

8 Ladies and gentlemen, I'm about to wrap
9 this up. If you need to check any of my
10 arguments, and I know the Court Reporter and Judge
11 do not like to me to say this, but you can have
12 testimony read back. It's only testimony from two
13 people. Check and verify the arguments that I've
14 made to you.

15 I know in a few moments that the
16 assistant district attorney will make his remarks.
17 I do not get a chance to reply to the remarks. He
18 gets the first word and last word. He gets to
19 draw up the search warrants, put these guys on the
20 witness stand. Now, he will make his arguments.

21 His argument, like my argument, is not
22 evidence. I'm sure that whatever he says, that
23 there's evidence or lack of evidence in this case
24 to counteract it. Ladies and gentlemen, I trust
25 in your intelligence and in your common sense to

YVETTE PACHECO SENIOR COURT REPORTER

SUMMATION - DEFENSE

1 see through that.

2 Ladies and gentlemen, you all promised
3 that you would give Edward Green a fair trial.
4 You all said that you would accept the law and
5 follow the law. Ladies and gentlemen, you cannot
6 hold it against Mr. Green or draw an adverse
7 inference because he did not testify. You all
8 promised that you would accept the law. He's
9 presumed innocent.

10 This case is weak. You are forced to
11 speculate and pick and choose which version is the
12 truth. What are you going to believe? What are
13 you going to conclude? Then you still have to
14 somehow make a connection between Mr. Green and
15 these drugs in this locked safe. It's just not
16 there. The judge will instruct you on the law
17 with regard to constructive possession. Ladies
18 and gentlemen, I submit that based on what you
19 have heard and what you haven't heard, Mr. Green
20 is not guilty of all these charges.

21 Thank you.

22 THE COURT: People.

23 MR. BERLAND: Can we approach,
24 Your Honor?

25 THE COURT: Yes.

YVETTE PACHECO SENIOR COURT REPORTER

PROCEEDINGS

1 (Whereupon, a sidebar conference was held
2 on the record out of the hearing of the jury.)

3 MR. BERLAND: I practice not to object
4 during closing. Mr. Keith, he said at one point
5 the defendant knew nothing about the
6 paraphernalia.

7 THE COURT: I heard it.

8 MR. BERLAND: The only people --

9 THE COURT: I heard it. I hear it.

10 MR. BERLAND: I think that's misleading.

11 THE COURT: Don't look at those folks.

12 MR. BERLAND: Yes, Your Honor.

13 THE COURT: What is it that you are
14 asking me to do?

15 MR. BERLAND: Open my case and put in
16 direct evidence of the witness of the fact that he
17 has sold drugs in the past.

18 THE COURT: How? How would you do that?

19 MR. BERLAND: Through the undercover
20 detective, Your Honor, who he sold to.

21 THE COURT: The '96 case?

22 MR. BERLAND: Yes.

23 MR. KEITH: Your Honor, with regard to
24 that, the conviction was in '96. The incident was
25 in '94, just to be accurate.

PROCEEDINGS

1 THE COURT: Do you have that witness in
2 the room?

3 MR. BERLAND: I do not, Your Honor. I
4 did not anticipate that happening.

5 THE COURT: I gather your file doesn't
6 have certificates of convictions for the three
7 felony offenses he's been convicted of?

8 MR. BERLAND: Correct. We can get that
9 within an hour, probably. It's a New York case.

10 THE COURT: There is no doubt in my mind
11 that people are allowed to counter this statement
12 that was made in the defense's summation. Why,
13 since we all agree that this is the fact, why --

14 MR. KEITH: I don't necessarily agree.

15 THE COURT: I know you do not agree that
16 you in a way opened the door again. Let's put
17 that aside. What I was referring to was we all
18 agree that there were these convictions and since
19 there was an official New York State NYSID history
20 that reflects at least two of the convictions, why
21 don't we just tell the jury that the defendant has
22 felony drug convictions and we do not have to give
23 them an iota more of information on that.

24 MR. KEITH: Your Honor, again, I think
25 the Court and prosecutor are improperly shifting

PROCEEDINGS

1 the burden of proof. There is no evidence to
2 suggest that he had any knowledge what these
3 things are used for. I don't think that this
4 opens the door. I ask again that Your Honor
5 declare a mistrial because of all of the mistakes.

6 THE COURT: Your mistakes or mine?

7 MR. KEITH: Both.

8 THE COURT: I don't think I made any
9 mistake.

10 MR. KEITH: I don't think I made any.

11 THE COURT: I know you made two.

12 MR. KEITH: I don't think so.

13 THE COURT: That is your reaction to my
14 saying why don't we simply say the official
15 New York State criminal history of Mr. Green
16 discloses felony drug convictions?

17 MR. KEITH: I think that deprives him of
18 a fair trial.

19 THE COURT: Procedurally, as opposed to
20 whether or not the rule is correct and whether or
21 not we adjourn to get a witness who will say
22 Mr. Green sold me the drugs or whether to adjourn
23 to get a certified copy of a New York State NYSID
24 sheet or certified copy of New York State
25 convictions, why don't we move this along to what

PROCEEDINGS

1 you perceive to be an unhappy end and just tell
2 them the official New York State history of the
3 defendant is that he has felony drug convictions?

4 MR. KEITH: Again, Your Honor, I don't
5 think that would be appropriate. If the People
6 want to -- you know, if you want to proceed down
7 this road, I suggest that the People give the
8 proof.

9 MR. BERLAND: We're here on Monday rather
10 than Friday because you represented that you had a
11 witness. As skeptical --

12 MR. KEITH: I spoke with the witnesses
13 over the weekend and made a decision not to put
14 that on.

15 THE COURT: I'm sure for perfectly valid
16 reasons. So you want this posture to be such that
17 there will be an obvious break and when we come
18 back, the thing that would have clearly caused the
19 break is the finding of a document which says he
20 has a drug conviction?

21 MR. KEITH: Your Honor, that document on
22 that statement is going to effectively deprive
23 Mr. Green of a fair trial. No, I will not consent
24 to that.

25 THE COURT: Give me a minute.